



DATE: August 17, 2004

TO: NR 115 Advisory Committee Members

FROM: Carmen Wagner, WT/2

SUBJECT: Summary of Comments from First Draft of Changes to Ch. NR 115, Wis. Admin. Code

The summary provided below includes comments received from advisory committee members at the May and June advisory committee meetings, as well written comments provided by advisory committee members after the meetings. The comments have been separated out by sections in the proposed code, and have been condensed to avoid repetition. A response to the comments is provided to explain how the first draft was changed to produce the second draft as a result of the comments or why a change was not made. For over 70% of the comments received from advisory committee members, a change was made to address the concerns raised.

This document does not capture or address all the changes between the first and second drafts because in some instances a change from the first draft to the second had cascading effects that required additional changes. This document also does include those comments which indicated support for a particular item, it only includes those comments requesting a change or posing a question.

115.01 Purpose

115.02 Applicability

- C: Eliminate note.
- R: Part of the note was eliminated and additional language was added to clarify that s. 13.48 (13), Wis. Stats., doesn't apply to projects for the benefit of the general public.

115.03 Definitions

- C: Should a "deck" be defined?
- R: A definition for deck has not been added because if a question arises over what is a deck, a dictionary definition would suffice.

- C: Definition of "footprint" should not include the overhang of a building.
- R: Roof overhangs have been excluded from the footprint of a building.

- C: "Forest land" definition should be more restrictive so a "loophole" is not created.
- R: The definition of "forest land" has not been altered because, by definition, the land and trees are grown because they are valuable "for non-residential uses".

- C: Use federal definition of "manufactured home".
- R: The definition of "manufactured home" was removed and a new definition for "residential structures" was added to cover all types of dwelling units.

C: Should an “open fence” be defined?

R: A definition was added for “open fence”.

C: At the end of “ordinary high-water mark” definition, add words to the effect: “or that point which has been determined by the WDNR to be the ordinary high-water mark when the level is likely to fluctuate over a period of years.”

R: If a zoning staff person ever has difficulties determining the location of an ordinary high-water mark, they may ask for assistance from the DNR. It is not necessary to include that in the definition.

C: Does the definition of “ordinary maintenance and repair” allow a roof to be replaced with a different pitch than the existing roof?

R: The definition was altered to clarify that roof replacement is included in “ordinary maintenance and repairs” if conducted in compliance with proposed s. NR 115.19 (3)(a).

C: Should “retaining walls” be included in the definition of structure? Does this present a conflict in the code?

R: Retaining walls are included in the definition of structure, but may be allowed in the shoreland buffer area if the standards in proposed s. NR 115.13 (4)(f) are met. There is not a conflict.

C: Does the definition of “structural alteration” fit accessory structures that are not buildings?

R: The definition was altered to clarify how the term applies to accessory structures that are not buildings.

115.05 Shoreland Zoning Districts

115.07 Shoreland-Wetlands Zoning

Permitted uses in shoreland-wetland zoning districts

C: If counties “may permit, prohibit, or authorize as a conditional use the following uses” (same as NR 117 language for cities and villages), could that cause problems with some of the uses, such as “hiking, fishing, trapping, hunting, swimming and boating”?

R: The language in the second draft has been changed to be the same as in the existing NR 115. No changes will be proposed to this section.

C: Should “walkways” be deleted?

R: No, walkways are an acceptable permitted use, provided that if the walkways are located in the shoreland setback area, they are constructed and maintained in compliance with the requirements of s. NR 115.07 (3)(h).

115.09 Land Division Review

General

C: Requiring counties to review all land divisions that create one or more lots that are 20 acres in size or smaller will mean much more time devoted to land division review. Is review necessary for all lots 20 acres in size and smaller?

- R: The land division review requirement has been decreased from 20 acres to one and one-half acres to be consistent with ch. 236, Wis. Stats.
- C: How does this provision mesh with ch. 236, Wis. Stats., for subdivision regulations?
- R: This provision, like ch. 236, Wis. Stats., requires review when lots are created that are one and one-half acres or less. Chapter 236, Wis. Stats., requires review and approval when 5 or more lots are created and the proposed language for ch. NR 115, would require review and approval when one or more lots are created. Section 236.45, Wis. Stats., authorizes local units of government to adopt land division ordinances that are more restrictive than ch. 236, Wis. Stats.
- C: Could the review requirements be better defined to address the issue of a single lot being subdivided into two or three lots which may not meet the definition of “subdivision” under ch. 236, Wis. Stats., to ensure that the county reviews the subdivision?
- R: To address the creation of lots which may not meet the threshold of five or more lots required in ch. 236, Wis. Stats., the proposed language for ch. NR 115., is when one or more lots are created that are one and one-half acres or less. The number of lots has not changed between the first and second drafts.

Net project area

- C: Is it necessary to have 5,000 s.f. of “buildable area” in order to develop a lot? Should the county just check that there is an area that could be built on, regardless of the size? To prevent confusion, should the net project area not identified on the plat, in case the ordinance changes later, and as a result, the net project area is different? This would require the property owner to check first with the county before building, rather than just relying on the plat.
- R: The net project area requirement was removed from the second draft of the proposed language for ch. NR 115, to allow counties to decide on local basis how to best handle this issue.

Navigable bodies of water within lots

- C: Can this requirement be simplified or clarified?
- R: This provision was reworded to clarify the intent and to make the requirement only apply if a county allows building construction on the property.

115.11 Minimum Lot Sizes

General

- C: Rather than measuring the lot width at the narrowest point of the lot, would it be easier to measure the lot width at the ordinary high-water mark (OHWM) and at the OHWM setback?
- R: The measurement of lot width was changed so that on riparian lots, the width is measured at both the ordinary high-water mark and at 75 feet from the ordinary high-water mark, and for non-riparian lots, the width is measured at the roadway setback.
- C: Should it be permissible to allow two principal structures if the lot area is large enough? For instance, if a lot is 40,000 s.f., could it have two principal structures?
- R: The provision limiting one principal structure per lot was removed.
- C: Would it be easier to have just a minimum lot area for each dwelling unit rather than for each type of residence?

- R: The second draft removed the language basing lot size on single-family residences, duplexes and multiple-family residences, and instead uses the number of dwelling units in a building to determine how large of a lot is required.
- C: Is it necessary to have a minimum lot width for “inland” lots? Could a minimum area suffice?
- R: In the second draft, a minimum lot area was retained, but the minimum lot width requirement was removed, for lots located 300 feet or more from the ordinary high-water mark.
- C: Should the minimum lot width for duplexes and multiple family residences be on a sliding scale rather than kept at the standard 100-foot width for each dwelling unit?
- R: The requirement for 100 feet of lot width for each dwelling unit found in the first draft was removed from the second draft. The second draft uses a sliding scale that requires 100 feet of width for each building with a single dwelling unit, 75 feet of width for each dwelling unit in a building with two to four dwelling units, and 65 feet of width for each dwelling unit in a building with five or more dwelling units.
- C: Eliminating the 10,000 s.f. lot requirement for sewerer lots will cause a large number of lots to be considered nonconforming in addition to all the nonconforming lots that already exist. I believe this issue can be better dealt with using buffer requirements and impervious surface limits.
- R: When the division between sewerer and unsewerer lots was first created in the existing administrative code, it made sense because a sewerer lot would not need as much room as an unsewerer lot to accommodate a septic system. However, research over the last 30 years has shown that lots, regardless of whether they are sewerer or unsewerer, have the same impact on surface waters, considering, for example, the impact of storm water runoff on navigable waters or the impact on wildlife habitat. In light of this, it makes sense to require a lot, sewerer or unsewerer, to be the same size since it will have the same impact.

To limit the amount of substandard lots created, a compromise is proposed in the second draft that requires a 20,000 square foot standard for lots within 300 feet of the ordinary high-water mark and requires a 10,000 square foot standard for lots 300 feet or more from the ordinary high-water mark. This proposal maintains or increases protection on lots in the first 300 feet landward of the ordinary high-water mark, while providing more options for property owners of land 300 feet or more from the ordinary high-water mark.

- C: Are you going to address condominiums?
- R: Provisions that clarify how certain standards apply to condominiums and other multi-unit developments have been added to the sections for minimum lot sizes, shoreland buffers, and mitigation.

Campgrounds

- C: Who will regulate the time limit on permanent and non-permanent campsites?
- R: The time limits on campsites in campgrounds would be a permit condition for a campground, and if violated, would be enforced by the county zoning agency.
- C: Should the limit on non-permanent campsites be lowered to 30 days from 180 days? Should the maximum length of stay in Wisconsin State Park Campgrounds be used?
- R: The time limit in the second draft was changed from 180 days to 120 days to be consistent with other campground time limits found in ch. HFS 178, Wis. Admin. Code, for campgrounds. Other

changes were made to the campground definitions and provisions to be consistent with ch. HFS 178, Wis. Admin. Code.

- C: It is unfair to allow one class of individuals – “permanent campsite users” – to be allowed to locate dwellings on small parcels in the shoreland zone and enjoy all the associated benefits while other individuals are denied that right and are only allowed to locate dwellings in the shoreland zone on much larger lots to enjoy the same benefits and privileges.
- R: In this proposal, “permanent campsites” would need to meet similar standards to residential structures because the environmental and recreational impacts from a “permanent campsite” are similar to the impacts from a residential structure.
- C: Campgrounds should be treated as a density issue, which is much easier to identify and enforce.
- R: The proposal does regulate campgrounds on a density basis. Language has been added to clarify that minimum area requirements apply to the campground as a whole and are not intended to create minimum size requirements for individual campsites.

Other uses

- C: Should the minimum lot size for other uses be changed? The density of development and intensity of use may require a larger lot size.
- R: The minimum lot size for other uses has been increased to 1 acre if the lot is located within 300 feet of the ordinary high-water mark and maintained at 20,000 square feet for lots located 300 feet or more from the ordinary high-water mark.

Planned unit developments (PUD)

- C: Have you referred to what the counties are currently doing to see how this proposal meshes with it?
- R: The proposal has been designed to try and allow counties as much flexibility as possible in approving PUDs, while making certain that minimum standards are maintained when counties permit PUDs.
- C: Should the minimum lot width be on a sliding scale or a percentage for waterfront lots?
- R: The requirement for 100 feet of lot width for each dwelling unit found in the first draft was removed from the second draft. The second draft uses a sliding scale that requires 100 feet of width for each building with a single dwelling unit, 75 feet of width for each dwelling unit in a building with two to four dwelling units, and 65 feet of width for each dwelling unit in a building with five or more dwelling units.
- C: Should there be a minimum increase in the setback or buffer to qualify for reduced lot sizes in a PUD?
- R: A minimum increase of 25 feet in the shoreland setback and vegetative buffer was added, as well as a minimum size of 5 acres for the PUD.
- C: Would be nice if rule would apply to all multi-unit developments – resorts, motels, hotels, condos.
- R: The proposal was reworded to generically apply to dwelling units, whether resorts, condominiums, apartment buildings or houses. A hotel or motel, that is converted to condominium ownership for the individual units would be a “residential structure,” but would be considered a commercial use that falls under “other uses” if rooms are rented.

- C: PUDs should be by conditional use permit only.
- R: The proposed rule allows counties to determine how to permit PUDs; however, the DNR will recommend that counties should adopt procedures to require the county planning and zoning committee or commission to review and approve of planned unit development proposals, consistent with s. 59.69 (2)(bm), Wis. Stats., which includes the review of planned unit development plans in its description of the powers of a county planning and zoning committee or commission.

Substandard lots

- C: A minimum width should be required as well a minimum lot size.
- R: A minimum lot width of 50 feet was added to the provision allowing setback reductions in the proposed s. NR 115.13 (4).

Keyhole Development

- C: Determine if standards for backlot or keyhole development are needed based on how minimum lot size requirements are modified.
- R: Standards for keyhole development have been introduced in the second draft in s. NR 115.09 (5). The proposal is based on a provision in Lincoln County's Shoreland Zoning Ordinance.
- C: Keyhole development should be prohibited because it borders on the conveyance of riparian rights to non-riparians which is expressly prohibited in s. 30.133, Wis. Stats.
- R: The riparian rights of the owners of a keyhole lot would be based on the characteristics of the keyhole lot – such as the number of berths allowed for a pier based on the amount of water frontage. Establishing standards for keyhole development does not convey riparian rights as prohibited in s. 30.1333, Wis. Stats., because the rights would only be conveyed to those who own the riparian lot.

Shoreland Buffers – Structural Standards

General

- C: Eliminate the roof overhang from the setback measurement or require the maximum roof overhang to be 1 to 2 feet.
- R: Language regarding measuring setbacks from roof overhangs was added in the second draft in s. NR 115.13 (2)(b) and is based on how a county has historically measured the ordinary high-water mark setback.

Permitted structures

- C: Do these structures require a permit or can a county allow if certain standards are met without a permit? Some structures currently requiring a permit should be considered exempt and should not require mitigation.
- R: This proposed section was renamed “permissible structures” and reworded to clarify that these structures may be permitted, prohibited, allowed without a permit, or authorized as a conditional use.

Water dependent structures

- C: How does this apply to wet boathouses?
- R: Wet boathouses were added as an example of a water dependent structure.

Agricultural fences

- C: Should there be any exemption for open fences for safety reasons in residential area or to separate incompatible land uses in shoreland areas? Could open fences be limited to secondary buffer?
- R: A definition of “open fence” was added as well as provisions to allow open fences in the secondary buffer.

Stairways, walkways and lifts

- C: What if the viewing and access corridor (VAC) is not the best place to site the stairway, walkway or lift?
- R: The provision that required locating stairways, walkways, and lifts in the VAC, wherever possible, was removed from the proposed rule.

- C: What if a lot is a multiple-family development, is it limited to one stairway, walkway or lift? Could it be one stairway, walkway or lift per VAC?
- R: The proposal was reworded to allow one stairway, walkway or lift per five dwelling units rather than one stairway, walkway or lift per lot.

- C: What if the most appropriate construction method for the site is an at-grade stairway rather than a raised stairway?
- R: The proposed language was reworded to not require elevation of stairways and introduced standards for stairways constructed at-grade.

- C: Is the vertical interval between landings and the landing size consistent with UDC standards?
- R: The landing provision was changed to be consistent with the UDC requirement of a 12-foot separation between landings.

- C: What if a homeowner wants to use an all terrain vehicle (ATV) on the walkway or is the access limited to pedestrian access? Is four feet wide enough for an ATV? Do ATV trails need to be addressed? Should there be a distinction between trails for utility and trails for recreation?
- R: The provisions currently only allow walkways for pedestrian use.

- C: Would historical walking paths that are open to the public be exempt?
- R: Walkways for public use were added to the proposed list of permissible structures under s. NR 115.13 (4)(b).

Signs:

- C: What if signs are needed at locations other than access sites or campgrounds, such as “Warning – Underground Cable” signs? These signs, to be effective should not “visually inconspicuous”.
- R: The provision requiring that water-dependent signs be visually inconspicuous was removed.

- C: Should temporary signs, such as “For Sale” signs, be allowed? If other signs are allowed, should they be limited to those requiring water dependency and for health and safety reasons?
- R: Counties were given the ability to regulate other informational signs, such as for sale signs, if the county regulates the signage and associated lighting to preserve wildlife habitat and natural beauty.

Water quality and wildlife habitat improvement structures

- C: What about wildlife habitat improvement structures? Should they also be allowed?
- R: Provisions were added to specifically allow wildlife habitat improvement structures.

- C: Should these structures be required to be visually unobtrusive?
- R: As a condition of water quality improvement structures, the second draft proposes that vegetation must be preserved or established to maximum extent practicable within 50 feet of the ordinary high-water mark which will help screen the structure. For wildlife improvement structures, the second draft proposes that the structure must be constructed of natural materials that are visually inconspicuous, to the extent practicable.

Structural erosion control measures

- C: Is this just for retaining walls? If so, why not just say so?
- R: Retaining walls have been added as an example of structural erosion control measures, but other types of structures may also be considered structural erosion control measures, so limiting this section to retaining walls was not pursued to allow for new technologies as they develop.

- C: To eliminate unnecessary workload, suggest that any slope of 12% or more be considered eligible for structural erosion control permitting. On slopes of less than 12%, the property owner could provide evidence of physical erosion. If the Department requires erosion to be “significant”, that standard needs to be clearly defined.
- R: A 12% slope was not used because in many instances, depending on soil characteristics and other factors, a 12% slope can be stable and suffer from no erosion. Requiring the demonstration of significant erosion will help avoid the construction of unneeded structures in the shoreland setback area.

- C: Could this section be briefer?
- R: The section was simplified and shortened in the second draft.

Marine fuel dispensing systems

- C: Does the screening requirement conflict with any fire codes or other standards for fuel tanks?
- R: Not that we are aware of. The proposed rule language is consistent with Comm 10, Wis. Adm. Code, and a Department of Commerce Program Letter entitled "Marine Fuel Dispensing System Located on Docks" that was issued in May of 1997.

- C: Could the requirements for dispensing systems be separated from the requirements for fuel storage tanks?
- R: The provision was reworded to clarify which provisions apply to the dispensing system versus the storage tanks.

- C: Why would you want these structures in the VAC if you want them visually unobtrusive?
- R: The requirement to locate these structures in the VAC was removed in the second draft.

Roads and Driveways

- C: What if someone, because of the topography or dimension of their lot, is limited to locating the driveway within the shoreland buffer setback area?
- R: This provision was broadened to allow driveways and roads in the shoreland setback area if there is no other feasible location to provide access to a property if certain conditions are met.

- C: Do access roads to private-owned ramps fall under this section?
- R: No. The provision only allows roads and driveways to access a property, not a boat ramp.

Utilities

- C: Should structures related to utilities be allowed within the shoreland buffer setback area?
- R: Provisions were added to address utilities.

Dams

- C: Should structures related to dams and levees be allowed within the shoreland buffer setback area?
- R: Provisions were added to address dams.

Open and screen-sided structures

- C: Proposed note provides that all structural areas contribute to 200-foot limit for “gazebos”. This is contrary to legislative intent and should be revised.
- R: The note was deleted from the proposed language.

Setback reduction process

- C: Should adjoining lots be required to be in separate ownership to qualify for a reduced setback?
- R: The provision was reworded such that a reduced setback may be granted if a compliant building location is not available on the lot or on abutting lots in common ownership. The requirements that adjoining lots be in separate ownership was removed.

Shoreland Buffers – Vegetation Standards

General

- C: Can this statement be made more general or easier to understand?
- R: A purpose section was added to this section (and other sections) to make the goal of the section easier to understand.

- C: Is an exemption needed for utility and roadway maintenance or for temporary access for construction equipment? Should it be combined with pedestrian access?
- R: Exemptions for maintenance of utilities, roads, driveways, dams, and temporary access were added to this section. These provisions were kept separate from pedestrian access issues.

- C: Are buffer requirements only applicable if required by county ordinance? Is this a county option?
- R: Buffers are not optional.

Primary buffer

- C: Does the permitted removal of vegetation require replacement?
- R: This section was reworded to clarify when replacement is required.

- C: What if you need to remove healthy vegetation to prevent the movement of a disease, such as oak wilt? Can you remove any dead trees? What if you need to remove some vegetation to encourage native vegetation regeneration?
- R: Removal of trees to control oak wilt would be allowed if the standards in s. NR 115.15 (3)(a) 3.a. are met. Removal of dead trees would be allowed if an imminent safety hazard under NR 115.15 (3)(a) 3.d. Removal of vegetation to encourage native vegetation regeneration would be allowed if the conditions of s. NR 115.15 (6) are met.

- C: What if additional clearing is required to allow machinery to complete some activity at the shoreline – is that permissible if the vegetation is restored at the completion of the activity?

R: A provision for temporary access was added.

C: Why was the 50-foot primary buffer depth chosen instead of 35 feet?

R: Over the last 30 years, studies have shown, that a minimum a buffer of 100 feet is needed to maintain shoreland functions, such as water quality protection and wildlife habitat preservation. A buffer of 100 feet is not feasible as a statewide minimum, however, so the primary buffer has been increased from the existing standard of 35 feet to 50 feet to maximize the protection offered to the state's navigable waters. The buffer was also increased to mitigate the potential impacts of new activities that have not historically been allowed in the shoreland area.

Viewing and Access Corridor

C: How does the VAC requirement apply to condominium units, such as the conversion of old resorts?

R: A provision was added to address this issue.

C: Could a single-family residence have multiple VACs, if they in total do not exceed 30 feet?

R: The VAC language was changed to allow the property owner to decide if they want one VAC or multiple VACs.

C: Are gravel paths allowed in the VAC? They are not vegetated.

R: Walkways and other structures that meet the standards of NR 115.13 (3) and (4) may be allowed.

C: "Filtered view" is very restrictive and too subjective. This would present significant enforcement and implementation problems.

R: This concept has been successfully implemented in other areas.

Natural areas management activities

C: Would this make it more difficult for people who want to restore their shorelines?

R: No.

Pre-existing lots and now or expanded nonconforming structures

C: Can this section be made more concise or easier to understand?

R: The section was substantially reworded to make it easier to understand.

Land Disturbing Activities

General

C: Could activities permitted by an erosion control permit or through other methods also be exempted from requiring another permit?

R: Yes.

C: Are these the only situations a county can require a permit for land disturbing activity? Or, is this a minimum and counties can be more restrictive? Please clarify.

R: Counties can be more restrictive. All the standards in ch. NR 115 are minimums.

C: This creates a new permit requirement for land disturbing activities. It is not needed in most cases because of overlap with other state requirements in NR 151, NR 216 and Ch. 30. It should be eliminated entirely or should be exempt if they have obtained a permit from the Department or a

Storm Water/Erosion Control permit from the County. There are already too many permits for this type of activity from too many agencies.

- R: The proposal allows counties to exempt from their permit process activities that have already been granted a permit through the state. The minimum threshold for grading permit proposed is similar to standards already in place in 50 counties in the state.

Nonconforming Uses and Structures

General

- C: Why was additional text added to the statutory language?
- R: Additional language was added to explain how issues that are not addressed in the statutes (issues related to nonconforming uses other than trade or industry) have been decided by Wisconsin courts and interpreted by the Wisconsin Department of Justice, and to point out that limitations on nonconforming uses and limitations on nonconforming structures are both potentially applicable.
- C: When referencing “alterations”, should it be “structural alterations”?
- R: Yes. In places where it appeared to be unclear, we clarified it was “structural alterations”.

Nonconforming accessory structures

- C: Are the definitions of “ordinary maintenance and repair,” “structural alteration” and “reconstruction” appropriate for accessory structures? They seem to be focused on buildings and may not be appropriate or easily understood for a fence or retaining wall.
- R: These provisions were reworded to clarify how they apply to structures that are not buildings.

Expansion (of nonconforming principal structures)

- C: Is it necessary that to qualify for expansion, a compliant building location not be available?
- R: Yes. It is consistent with the standards recently approved by the Natural Resources Board for ch. NR 118, Wis. Admin. Code. This approach gives property owners the option to keep (or reconstruct) an existing nonconforming structure or move the building to a conforming location so that they can build a larger structure.
- C: How do the changes to ch. NR 118, Wis. Admin. Code, affect reconstruction on existing foundations?
- R: Changes were made to the proposed code to be consistent with changes to ch. NR 118, Wis. Admin. Code. Foundations may be replaced if the nonconforming structure is entirely set back at least 50 feet from the ordinary high-water mark.
- C: Is it necessary to require compliance with height restrictions?
- R: The requirement was removed.

Mitigation Requirements

General

- C: Entire section is confusing. Needs better organization and flow. It is not readily apparent what situations require mitigation and to what extent. In addition, the buffer requirements are very general.
- R: A purpose section was added to this section (and other sections) to make the goal of the section easier to understand. The section was also substantially rewritten to make it clearer.

- C: Mitigation is required for any construction, expansion, alteration or reconstruction “within the shoreland zone”. This would require mitigation for any activities in the 300-foot or 1000-foot shoreland zone, not merely structures within the 75-foot setback. This is much too broad in scope. The mitigation requirements should be confined to the 75-foot setback, or at most, a uniform 300 feet from the OHWM.
- R: Certain mitigation requirements will only apply if the structure is within 50 feet of the ordinary high-water mark or the lot is within the shoreland setback area. Other mitigation requirements (such as making a structure visually inconspicuous, when viewed from the water) will apply to all structures in order to offset potential impacts.
- C: Where is the proportionality of the activity that triggers mitigation?
- R: The proportionality of activity that triggers mitigation has been built into the mitigation requirements. Accessory structures require less mitigation than principal structures and structural alteration of a structure requires less mitigation than expanding or reconstructing a structure.
- C: Should more distinctions be made between activities requiring mitigation and the mitigation required? For example, should expansions be separated from reconstruction and new construction or should structural alterations to principal structures be separated from structural alterations to accessory structures? Should structures exempt from the shoreland setback be exempt from mitigation?
- R: A more detailed hierarchy of mitigation activities is proposed in the second draft. Structures that are exempt from the shoreland setback are still required to mitigate their impacts because they are located extremely close to the water. In many cases, the mitigation required for structures exempt from the shoreland setback would be limited to using vegetation to screen the structure, using natural building materials or otherwise designing the structure to be visually inconspicuous.
- C: Could the visually inconspicuous requirement be met by using earth-tone building materials rather than just by planting vegetation? Visually inconspicuous should be codified.
- R: More options were provided to property owners to meet the visually inconspicuous standard.
- C: The requirement that “at least 80% of the post-construction runoff” is to be controlled, should be increased to 95%.
- R: While increasing the standard to 95% would increase the potential benefits to water quality protection, the advisory committee felt 80% is a more attainable goal.

Adoption of Administrative and Enforcement Provisions

Department Duties

General Comments

- C: When a defined term is used for the first time in the code, refer to the definition, “...as defined in...”.
- R: This has not been added to the second draft. According to the Wisconsin Legislative Council Rules Clearinghouse’s “Administrative Rules Procedures Manual,” such cross-referencing is only appropriate if the definition that is being cited is in another rule chapter or a statute. It would be considered redundant to cross-reference a definition in s. NR 115.03.

C: Instead of relying on notes throughout the code, maybe more guidance would be appropriate.

R: Many notes were removed or simplified to shorten the proposed code.

C: Use permissive statements instead of prohibiting activities unless something is done.

R: Permissive statements are difficult to enforce and are generally not used in rules.

C: Determine if standards for backlot or keyhole development are needed based on how minimum lot size requirements are modified.

R: Standards for keyhole development were added.

C: Support a ban on phosphorus fertilizers in the shoreland.

R: This is not addressed in the current draft, but counties have the authority to adopt more protective measures.

C: A restriction on all outdoor lighting should be implemented.

R: Lighting ordinances are listed as an example of additional protections a county may want to adopt.